

PENDING CALIFORNIA LEGISLATION of interest to banks, as of March 08, 2004

## **2004 bills**

**A.B. 1810** (Frommer, Wiggins, Reyes), introduced January 12, 2004. With Banking & Finance Committee.

Would add Financial Code 51000 et seq. to require independent sales organizations and other ATM providers to be licensed by the Department of Financial Institutions. Exceptions for banks, S&Ls, credit unions.

**A.B. 1811** (Bogh), introduced January 13, 2004. With Judiciary Committee.

Would amend Civil Code 1798.85 to restrict public display of any portion of an individual's social security number.

**A.B. 1859** (Nakano), introduced February 2, 2004. With Banking & Finance Committee.

Would add Corporations Code 17350.5 to allow a limited liability company that has not conducted any business to execute and file with the Secretary of State a certificate of cancellation.

**A.B. 1863** (Harman), introduced February 2, 2004. With Judiciary Committee.

Would amend Corporations Code 25506 to extend the statute of limitations for civil actions alleging violation of the prohibitions against certain fraudulent practices (in the Corporate Securities Act of 1968) from the earlier of four years after the violation or one year after discovery, to the earlier of five years after the violation or two years after discovery.

**A.B. 1894** (Longville), introduced February 5, 2004. With Public Safety Committee. Hearing set March 16, 2004.

Would add Penal Code 1536.5 to provide a procedure for a business entity whose records have been seized by a government agency to demand copies of the records, or access to the originals so that the entity could make its own copies.

**A.B. 2007** (Committee on Business & Professions), introduced February 13, 2004. With Business & Professions Committee.

Would amend Civil Code 1749.5 on gift cards.

**A.B. 2092** (Liu), introduced February 17, 2004.

Would add Civil Code 1747.30 to prohibit offering credit cards to minors.

**A.B. 2094** (Liu), introduced February 17, 2004. With Banking & Finance Committee.

Would amend Civil Code 1748.9 on preprinted checks to require an activation process through which the intended recipient must contact the issuer to activate the check prior to use.

**A.B. 2374** (Bates), introduced February 19, 2004.

Would amend Civil Code 1785.26 to require a creditor who has provided a written notice to a consumer warning about negative credit information that is about to be reported to a credit reporting agency, to make reasonable efforts to locate the debtor whenever the notice is returned as undeliverable.

**A.B. 2537** (Mountjoy), introduced February 20, 2004.

Would add Civil Code 1798.98 on children's privacy.

**AB 2671** (Pacheco), introduced February 20, 2004. Sponsored by the CBA.

Would amend Commercial Code 4406 to extend from 1/01/05 to 1/01/10 the sunset date for regarding a listing of check number, check amount, and date paid as sufficient to allow a bank customer to identify in item in a periodic statement.

**A.B. 2693** (Wiggins), introduced February 20, 2004.

Would amend Financial Code 22059 to provide an exception to the prohibition on a licensed broker's negotiating or performing any act as a broker in connection with a loan made or to be made by a lender not licensed under the California Finance Lenders Law. The exception would apply if the lender is an affiliate of the licensee or is otherwise exempt from licensure under the Finance Lenders Law.

**A.B. 3013** (Pavley), introduced February 20, 2004.

Would add Civil Code 1747.08 and 1747.09 to prohibit a credit card issuer from printing more than the last five digits of the account number on a billing statement; from requiring the cardholder to do the same on a check when making a payment; and from printing the account number when endorsing such a check. It would also require a specific notice when a cardholder's payment grace period is shortened. The two new provisions would be effective January 2006, and would be effective only to the extent permitted by federal law.

**A.B. 3016** (Wesson), introduced February 20, 2004.

Civil Code 1798.85 prohibits public posting and certain other use of social security numbers, but allows such actions under certain conditions by persons who have been doing so continuously since July 2002. The bill would eliminate that "continuous use" exception.

**S.B. 1150** (Burton), introduced January 26, 2004. With Judiciary Committee. Sponsored by CBA.

Would add B&P Code 14440 et seq. to prohibit use of a lender's trade mark or trade name or a similar name, without a prominent disclaimer that the person is not sponsored by or affiliated with the lender, etc. Would also prohibit use of loan information of a consumer in a solicitation for services or products, without a similar disclaimer. "Lender" would be defined as a bank, etc., or other lender licensed to make loans in California, or an affiliate of subsidiary of same.

**S.B. 1176** (Dunn), introduced February 05, 2004. With Judiciary Committee.

Would add B&P Code 16720.1 to define a trust (for purposes of antitrust law) to include an act by one or more persons to monopolize, or to attempt to monopolize or to combine or conspire with another person(s) to monopolize, trade or commerce.

**S.B. 1279** (Bowen), introduced February 13, 2004. With Judiciary Committee.

Would add Civil Code 1785.11.25, 1785.15.5, and 1798.91 et seq, and amend 1798.29 and 1798.82 to, among other things, require a consumer credit reporting agency to allow a consumer (without charge) to add or change a password to the consumer's credit file.

The reporting agency would also have to provide a toll free number staffed 24/7 by people who can respond to calls from consumers about their rights in connection with credit reports.

The law requiring notices of breaches of personal information in computerized data would be expanded to all data, and to require two years of a credit monitoring service without charge for any person whose personal information is reasonably believed to have been acquired by an unauthorized person.

**S.B. 1292** (Dunn), introduced February 17, 2004. To Banking, Commerce & International Trade Committee.

Would add Financial Code 14411 to allow credit unions to cash checks and sell negotiable instruments and money transfer instruments to members.

**S.B. 1408** (Poochigian), introduced February 19, 2004. With Judiciary Committee.

Would amend Civil Code 3439.04 to set forth certain factors that may be considered in determining whether a transfer is fraudulent. But the bill would say that it is only declaratory of existing law.

**S.B. 1451** (Figueroa), introduced February 19, 2004.

A spot bill for legislation dealing with offshoring of private medical or financial information.

**S.B. 1514** (Poochigian), introduced February 19, 2004. Sponsored by CBA. With Judiciary and Local Government Committees.

Would add Government Code 53800 et seq. to require a local agency to notify any holder of an interest in a delinquent property prior to enforcing a delinquent water assessment by taking title to the property.

**S.B. 1637** (Committee on Banking, Commerce & International Trade), introduced February 20, 2004. With that committee.

Would amend Financial Code 253, 261, and 1000, and add Fin C 1520 to require (instead of authorize) the Commissioner to charge \$25 for certified copies, and to expand the list of persons whose fingerprints the Commissioner can send to law enforcement authorities.

It would adopt into state law existing federal regulations with standards for bank fiduciary activities.

It would amend the definition of a foreign savings association for certain purposes.

It would also repeal Fin C 1239 on amortized real property loans secured by more than 80% of appraised value, if the loan includes amounts to rehabilitate one family residential structures.

**S.B. 1664** (Karnette), introduced February 20, 2004. With Judiciary Committee.

Would amend Civil Code 1798.80 include within the definition of “business” for purposes of the requirement to destroy customer records containing personal information, any subcontractor that is entrusted with such information.

**S.B. 1665** (Hollingsworth), introduced February 20, 2004. With Banking, Commerce & International Trade Committee.

Would amend Financial Code 360 to reduce the application fee for organizing a bank from \$5000 to \$4000.

**S.B. 1801** (Bowen), introduced February 20, 2004.

Would amend B&P Code 6140, CCP 1010.5, and other laws to prohibit a state or local agency or court that accepts a credit or debit card from imposing a processing fee or other charge, unless the fee is also imposed on persons who pay by cash or check.

**S.B. 1822** (Figueroa), introduced February 20, 2004.

Would add Civil Code 1798.87 to provide that a person who sells a social security number is strictly liable in damages to the owner of the number. However, the provision would not apply to any sale of a social security number as part of a transaction regulated by the Consumer Credit Reporting Agencies Act, the federal Fair Credit Reporting Act, or other federal or state law that restricts the dissemination of personal identifying information.

**S.B. 1841** (Bowen), introduced February 20, 2004.

Would require prior notice to employees before they are electronically monitored.

## Two-year bills that are apparently still alive, but have had no action in 2004

**A.B. 70** (Wyland), as amended March 5, 2003. *Passed Assembly (77-0)*. With Senate Public Safety. Hearing cancelled at author's request, July 1, 2003.

Would amend Penal Code 502.01 to add to the list of offenses for which a computer, etc., used in the commission of the offense would be subject to forfeiture.

**A.B. 73** (Lowenthal), as amended May 8, 2003. *Passed Assembly (64-8) on May 19, 2003*. With Senate Judiciary. Hearing cancelled at author's request, July 1, 2003.

Would add Financial Code 4003 to prohibit a charge card issuer, financial institution, or other lender from soliciting consumer loans or credit by sending unsolicited checks to consumers who reside in California, unless the consumer is provided a mechanism that allows him or her to elect not to receive the checks.

**A.B. 95** (Corbett), as amended May 12, 2003. *Passed Assembly (41-35) on June 5, 2003*. With Senate Judiciary. To third reading, July 15, 2003.

Would add B&PC 17204.7 and 17204.8 to require any person who files a private action under B&PC 17,200 on behalf of the general public to serve a specified notice on each defendant. The bill would also set forth principles of joining of defendants, and would specify that the various provisions in the bill are not severable.

**A.B. 578** (Leno), as amended July 3, 2003. *Passed Assembly, July 7, 2003*. With Senate Judiciary. Hearing August 19, 2003, cancelled at request of author.

Would enact (as an emergency statute, effective on passage) the Electronic Recording Delivery System Act by adding Government Code 27362 and 27390 et seq (and repealing Government Code 27279.4 and 2739.8) to allow county recorders to develop electronic recording systems, and to charge up to \$1 more per document for any document filed electronically. It would authorize specified counties to participate in an electronic recording pilot project until January 1, 2011, with the Attorney General evaluating any such pilots and reporting to the legislature by June 30, 2007.

**A.B. 800** (Kehoe), as amended May 7, 2003. *Passed Assembly (76-0) on May 12, 2003. Passed Senate (38-0) on June 24, 2003*. Held at Assembly Desk to see if amendments to the Fair Credit Reporting Act pass Congress this year. Ordered returned to Senate, 1/12/04. Held at Senate Desk.

Would amend Civil Code 1785.25 to revise the process for consumer credit reporting agencies to investigate disputed information.

**A.B. 1776**, introduced March 18, 2003. *Passed Assembly (76-0) on May 15, 2003*. With Senate Judiciary. Hearing postponed by committee, August 18, 2003.

Would amend Corporations Code 2105 on access to records of foreign corporations.

**S.B. 122** (Escutia), as amended August 28, 2003. *Passed Senate (22-15) on June 4, 2003*. Refused passage in Assembly, September 12, 2003.

Would add B&PC 17204.6 to 17204.9 to require court approval of any settlement or compromise in most unfair competition actions brought or proposed to be brought by a private party on behalf of the general public, and would require the plaintiff to submit a copy of the complaint to the State Bar of California. Would specify certain equitable remedies applicable to all unfair competition actions, and would set forth principles for joining such actions. A private party seeking specified remedies would have to copy of any proposed judgment to the Attorney General, who would post the information on the Internet. Bill would be contingent on AB 95 being enacted and becoming effective before January 1, 2004.

**S.B. 584** (Alarcon), as amended July 7, 2003. *Passed Senate (23-15) on June 2, 2003*. With Assembly Business & Professions. Hearing postponed by committee, July 9, 2003.

Would add Business & Professions Code 17531.3, Civil Code 1726 and 1727, Insurance Code 395, and Public Utilities Code 2898 and 2898.1 to require, effective January 1, 2005, any “person” who advertises a service or product in Spanish, Tagalog, Chinese, Vietnamese, or Korean to make available, upon purchase by a consumer and at the consumer’s request, information in that language on the rates and terms of the product or service (and to tell the consumer of this right to request). This can be done by providing the consumer with a location or telephone number where the information may be obtained.

“Person” would include any person (other than a 501(c)(3) nonprofit) operating in the businesses of financial institution, insurance, public utility, money transferer, automobile dealer, or check cashing. Exception for small businesses. No specific remedy for violation, but it could constitute an act of unfair competition that could be prosecuted by a civil action brought by, among others, the Attorney General.

#### **Two-year bills that are dead, having not passed the house of origin by January 2004**

**A.B. 3** (Calderon), as amended April 8, 2003.

Consumer Credit Reporting Agencies Act of 2004. Would amend Civil Code 1785.13(d) to require a consumer credit reporting agency to remove adverse information within 30 days (instead of 90) after the agency is prohibited from including the information.

Would amend Civil Code 1785.25 to require a tax, judgment, or civil lienholder who has furnished information to consumer credit reporting agencies to report within 30 days that a reported lien has been released, or that an incident that resulted in the reporting of adverse information has been resolved.

**A.B. 485** (Ridley-Thomas), as amended April 21, 2003.

Would add Financial Code 4971 and 4972 to authorize any city with a population over 300,000, and any county with a population over 750,000, to adopt anti-predatory lending ordinances that go beyond state law.

Would repeal Financial Code 1916.12, which authorizes the Secretary of the Business, Transportation and Housing Agency to apply to state-regulated lenders making loans on residentially-secured property, rules equivalent to those that apply to federally-regulated financial institutions.

**A.B. 707** (Correa), as amended April 29, 2003, with Committee on Appropriations. Set, second hearing. Held under submission, May 28, 2003.

Would add Education Code 51833 to require the Department of Consumer Affairs and the Superintendent of Public Instruction to develop curriculum and educational programs in personal financial management for grades 7 – 12.

**A.B. 832** (Montanez), introduced February 20, 2003.

Would add Financial Code 22302.5 to prohibit a licensed lender from denying an application for a consumer loan solely on the basis of race, ethnicity, national origin, native language, or ZIP code of the applicant’s residence or business. All remedies at law and equity, including an action for injunctive relief.

**A.B. 1078** (Runner), as amended March 28, 2003.

As introduced, would amend Business and Professions Code 17514 on electronic sellers who solicit newspaper or magazine subscriptions. As amended, the bill would also add Civil Code 1689.4 to allow any person age 65 or older 60 calendar days to rescind any contract with a financial institution (as defined in 12 U.S.C. 1843(k)) doing business in California if the transaction has financial implications for the person.

**A.B. 1175** (Koretz), introduced February 21, 2003.

Would add Civil Code 1747.08 to prohibit a credit card issuer from sending out unsolicited preprinted credit card solicitations containing the consumer’s name and address or other personal information.

**A.B. 1226** (Montanez), as amended April 21, 2003.

Would add declare that credit unions are full-service retail depository institutions that can and do solicit potential members from an ever-expanding base, that they accrue great benefits from doing business in California, and that they capitalization, loans-to-one0-borrower, and conflict-of-interest requirements are not as strict as those applicable to community banks. Would direct the Legislative

Analyst's Office to review the feasibility of imposing a fee for funding public education, and the feasibility of other changes, on larger credit unions (state- or federally-chartered) that offer commercial loans to businesses, and that no longer require a "common bond" for the purpose of funding public education.

**A.B. 1295** (Calderon), as amended April 8, 2003.

Would add Welfare & Institutions Code 15710 et seq. to establish pilot programs in Los Angeles, San Diego, and San Francisco Counties for training bank employees in recognizing and reporting known or suspected instances of financial abuse of elders and dependent adults.

**A.B. 1664** (Montanez) , introduced February 21, 2003.

Would add Financial Code 4200 through 4213, the Bank Customer Bill of Rights, which would apply to California state banks and to foreign (other nation) banks licensed under Financial Code 1750 et seq.

A bank could not sell private credit information about a customer to a marketing business for profit without the customer's consent; could not charge customers using the bank's ATM cards an overdraft penalty of \$30 or more without providing notice of cumulative charges; could not issue credit cards with interest rates more than 2% above the prime rate; and could not charge more than "average" on a consumer loan if the customer qualifies for a lower rate and the bank has not advised the customer of that fact.

**A.B. 1713**, as amended April 30, 2003.

Would amend Code of Civil Procedure 1280 and add CCP 1281.24 and 1287.1 on consumer arbitration agreements. In Senate inactive file.

**S.B. 342** (Florez), introduced February 19, 2003.

Would amend Business & Professions Code 17534.8 and add B&PC 17538.43 to require any sender of unsolicited e-mail to include the seller's identity, etc., and to honor any request not to send future e-mails.

**S.B. 395** (Florez), as amended April 28, 2003.

As introduced, would add Financial Code 13042 to require that every ATM in California be equipped with an emergency access button for customer safety. As amended, would amend Corporations Code 2355 to make it a felony for any corporate officer, director, agent, or shareholder to destroy documents or to make or concur in the omission to make any material entry in the corporate books, with intent to defraud.

**S.B. 505** (Perata), introduced February 20, 2003.

Would add Civil Code 1726, the Postmark Payment Act, that payments to financial institutions regulated by the Financial Code or to credit cards issuers regulated by Financial Code 1747 et seq. would be deemed received as of the date of the Postal Service's postmark, if the envelope is properly addressed, postage prepaid.

**S.B. 691** (Escutia), as amended June 11, 2003. *Passed Senate* on May 15, 2003. With Assembly Insurance. Hearing cancelled at author's request, July 2, 2003.

Would add Insurance Code 676.18 to prevent an insurer from using credit ratings, credit reports, credit scoring models, or other related credit or financial information as a basis to underwrite, rate, or determine a placement in a particular payment plan for policies subject to Ins C 675.

**S.B. 766** (Florez), as amended May 5, 2003.

Would amend Corporations Code 25500 to abrogate certain holdings of Kamen v. Lindly and California Amplifier, Inc. v. RLI Insurance Co., two securities fraud cases. In Senate inactive file.

**S.B. 901** (Dunn), as amended July 15, 2003, with Senate Committee on Appropriations.

As originally introduced, would add Financial Code 60000 et seq., the California Community Reinvestment Act, to replicate the Federal Community Reinvestment Act on the state level. As amended, the bill would only authorize DFI to charter "low-income credit unions."



**S.B. 917** (Alarcon), introduced February 21, 2003.

Would amend Corporations Code 309 to prohibit a director from performing his/her duties at the expense of the environment, human rights, the public health and safety, the communities in which the corporation operates, or the dignity of the corporation's employees. Suits against the director or the corporation under the bill would only be for liabilities that accrue after January 1, 2017. [That is not a typo!]

Copies of the most recent text of any bill can be obtained at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

Bob Mulford      March 8, 2004